(2015) 07 NCDRC CK 0092

In the National Consumer Disputes Redressal Commission

Case No : 3142 of 2011

BIRLA SUN LIFE INSURANCE CO. LTD. & ANR — APPELLANT

Vs

S. RADHA RANI & ORS — RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : (2015) 07 NCDRC CK 0092

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : P.K. Seth, Y. Rajagopala Rao

Judgement

1. Late Shri Seetharama Raju took two insurance policies from the petitioner company one for Rs.21,00,000/- and the other for Rs.2,15,000/-. The insured having died due to heart attack on 02-09-2004 the claims were submitted by the complainants seeking payment in terms of the insurance policies taken by the deceased. The claims, however, came to be rejected by the insurance company, on the ground that the insured had concealed a pre-existing disease while submitting the proposal to the insurance company. Being aggrieved the complainants filed two separate complaints one before the concerned District Forum, the value of the clam being less than Rs.20,00,000/- and the other before the concerned State Commission the value being more than Rs.20,00,000/-. The complaints were resisted by the insurance company primarily on the same ground on which the claim had been repudiated.

2. The District Forum, vide its order dated 03-04-2009 passed in Consumer Case No.631 of 2006 dismissed the complaint as pre mature on the ground that a writ petition filed by the insurance company against the order passed by the Insurance Ombudsman was still pending. It would be pertinent to note here that the Insurance Ombudsman in a complaint which had been filed before him even before moving the District Forum, had upheld the claim as far as the policy with insured value of Rs.2,15,000/- was concerned. Being aggrieved from the order passed by the District Forum on their complaint the respondents/complainants

approached the concerned State Commission by way of First Appeal No.919 of 2009. Vide order dated 23-06-2011 the State Commission allowed their appeal and directed the insurance company to pay amount of Rs.1,91,927.60/- to the complainants along with interest at the rate of 9% per annum and cost of litigation quantified at Rs.5,000/-. Being aggrieved from the order passed by the State Commission the insurance company has filed Revision Petition No.3142 of 2011. In the meanwhile the writ petition which the insurance company had filed against the order of the Insurance Ombudsman dated 21-04-2005 has been dismissed by the Hon''ble High Court of Andhra Pradesh vide its order dated 08-07-2014.

3. In the complaint filed before the State Commission in respect of the policy with insured amount of Rs.21,00,000/-, the State Commission vide its order dated 17-03-2000 directed the insurance company to pay the balance claimed amount of Rs.19,87,013/- to the complainants along with interest at the rate of 7.5% per annum from the date of repudiation till the date of realization. The complainants were also held entitled to the cost of litigation quantified at Rs.5,000/-. Being dissatisfied with the order passed by the State Commission the insurance company is before us by way of First Appeal No.239 of 2008.

4. It is an admitted position that the claim under both the policies were rejected by the insurance company on identical grounds. It is also an admitted position and is also stated in the order of the Hon''ble High Court that the Insurance Ombudsman while setting aside the repudiation of the claim had directed the insurance company to settle the claim under the policy for the full sum assured. The Hon''ble High Court, while dismissing the writ petition filed by the insurance company against the award of the Insurance Ombudsman, inter alia held as under: 16. In view of the in built mechanism provided under the Rules, the scope of Judicial Review under Article 226 of Constitution of India, in the considered opinion of this Court, is very limited and unless the findings and conclusions arrived at by the Ombudsman are patently unfair and palpably perverse and suffer from jurisdictional infirmities and in violation of the principles of natural justice, the award by the Ombudsman is not amenable to jurisdiction of this Court under Article 226 of the Constitution of India.

17. In the present case the petitioner-company repudiated the claim by way of letter dated 4.11.2004 and after giving a complete and full opportunity to all the stake holders, the Ombudsman passed the impugned order on 21.04.2005. A reading of the said award clearly demonstrates that the Ombudsman extensively, thoroughly and meticulously

scanned the entire material made available and recorded a categorical finding that the evidence relied upon by the insurer is too flimsy to suffice for repudiation of the claim of the complainant. While referring to Section 45 of the Insurance Act, the Ombudsman also held that the insurer could not lead cogent and clear evidence and the repudiation is only a futile attempt. This Court fails to notice any perversity which warrants any interference of this Court under Article

226 of the Constitution of India. In the absence of any material irregularity in dealing with the matter, the petitioner-company can neither ask for setting aside the order nor request for remand.

18. The plea of fraud sought to be pressed into service before this Court is also not sustainable in the absence of any cogent and convincing material in support of the same.

23. In view of the law laid down by the Apex Court in the above referred judgments, the parameters subject to which a writ in the nature of Writ of Certiorari can be issued, are as follows.

(i) For correcting errors of jurisdiction; ii) where the procedure adopted is in violation of principles of natural justice; iii) when there is an error of law, which is apparent on the face of the record, but not mere error of fact however it may appear to be; and iv) when the finding of fact recorded is in total derogation of material available on record.

24. In the instant case, none of the above contingencies are present, as such in the considered opinion of this Court the order passed by the 1st respondent Ombudsman, which is a fact finding authority, does not warrant any interference of this Court under Article 226 of the Constitution of India.

26. In view of the above reasons and keeping in view the principles and parameters laid down by the Honble Apex Court in the above referred judgments, this Court does not find any justification to interfere with the order passed by the 1st respondent- Ombudsman. This Court is also of the opinion that there are no merits in the present writ petition, warranting interference of this Court by way of judicial review under Article 226 of the Constitution of India, and the writ petition is liable to be dismissed."

5. There is no material before us to even suggest that the aforesaid order of the Hon''ble High Court of Andhra Pradesh has been challenged by the insurance company before the Hon''ble Supreme Court. Consequently, the said order binds the insurance company. In view of the aforesaid order of the Hon''ble High Court of Andhra Pradesh the insurance company is liable to make payment to the complainants in terms of the order of the District Forum and the State Commission in Revision Petition No.3142 of 2011 and the said petition is liable to be dismissed on this ground alone. Since the claim against the policy subject matter of First Appeal No.239 of 2008 was rejected on the very same ground on which the claim under the policy subject matter of Revision Petition No.3142 of 2011 was rejected, and the above referred order passed by the Hon''ble High Court of Andhra Pradesh is binding upon the insurance company, the said appeal is also liable to be dismissed, without this Commission going into the merits of the said appeal.

6. For the reasons stated hereinabove, the Revision Petition No.3142 of 2011 as well as First Appeal No.239 of 2008 are hereby dismissed with no order as to

cost. The balance payment in terms of the orders passed by the fora below unless already made shall be made within six weeks from today. The amount, if any deposited by the insurance company with the District Forum/State Commission shall be released to the complainants along with interest which may have accrued on this amount. The balance amount shall be calculated by the Corporation and paid to the complainants within six weeks.

